

# **EXHIBIT 2**

**From:** Lowenstein, Jody D. (CIV) <Jody.D.Lowenstein@usdoj.gov>  
**Sent:** Friday, July 7, 2023 1:44 PM  
**To:** Kenneth Klukowski <kklukowski@schaerr-jaffe.com>  
**Cc:** Gene Schaerr <gschaerr@schaerr-jaffe.com>; Snyder, Cassandra M (CIV) <Cassandra.M.Snyder@usdoj.gov>; Powell, Amy (CIV) <Amy.Powell@usdoj.gov>  
**Subject:** RE: Schneider v. Austin, 3:22-cv-293 (SD Tex)

Ken,

Thank you for explaining plaintiffs' position on the fees issue. I'm sure it will come as no surprise that defendants disagree and do not think that plaintiffs are prevailing parties entitled to an award of attorneys' fees. If plaintiffs will stipulate to dismissal of their claims, defendants would be willing to agree to a reasonable schedule to brief the fees issue. So please let us know when you think you'll be prepared to file a motion for attorneys' fees and if you have a briefing schedule in mind.

Thanks,

**Jody D. Lowenstein**  
Trial Attorney  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
1100 L St. NW, Rm. 11010  
Washington, DC 20005  
(202) 598-9280  
[jody.d.lowenstein@usdoj.gov](mailto:jody.d.lowenstein@usdoj.gov)

**From:** Kenneth Klukowski <kklukowski@schaerr-jaffe.com>  
**Sent:** Thursday, July 6, 2023 4:20 PM  
**To:** Lowenstein, Jody D. (CIV) <[Jody.D.Lowenstein@usdoj.gov](mailto:Jody.D.Lowenstein@usdoj.gov)>  
**Cc:** Gene Schaerr <[gschaerr@schaerr-jaffe.com](mailto:gschaerr@schaerr-jaffe.com)>; Snyder, Cassandra M (CIV) <[Cassandra.M.Snyder@usdoj.gov](mailto:Cassandra.M.Snyder@usdoj.gov)>; Powell, Amy (CIV) <[Amy.Powell@usdoj.gov](mailto:Amy.Powell@usdoj.gov)>  
**Subject:** [EXTERNAL] RE: Schneider v. Austin, 3:22-cv-293 (SD Tex)

Hi Jody. Our best reading of 42 USC 1988 is that our clients are prevailing parties in the RFRA litigation over DOD's vaccine mandate, given that they were covered by a PI in a certified class in which they were members, and therefore that they are entitled to attorneys' fees. We do not believe that the mooted of the case solely as a result of DOD rescinding a policy only after the court already held that the policy violates RFRA strips those class members of prevailing party status. If after discussion DOJ and DOD reach a final decision that you take a contrary position, then the next steps would be advising Judge Brown so we could propose a briefing schedule to litigate that issue. If you would like to discuss the issue tomorrow, we can certainly have a phone call. And if that needs to be followed by a proposal that you would need to vet with others, then we could do that as well.

Kindly let us know your thoughts, and thank you.

Best regards,

Ken

Kenneth A. Klukowski  
Schaerr | Jaffe LLP  
1717 K Street NW, Suite 900 | Washington, DC 20006  
Office (202) 787-1060 | Mobile (202) 688-5640  
[kklukowski@schaerr-jaffe.com](mailto:kklukowski@schaerr-jaffe.com) | [www.schaerr-jaffe.com](http://www.schaerr-jaffe.com)

**From:** Lowenstein, Jody D. (CIV) <[Jody.D.Lowenstein@usdoj.gov](mailto:Jody.D.Lowenstein@usdoj.gov)>  
**Sent:** Thursday, July 6, 2023 12:39 PM  
**To:** Kenneth Klukowski <[kklukowski@schaerr-jaffe.com](mailto:kklukowski@schaerr-jaffe.com)>  
**Cc:** Gene Schaerr <[gschaerr@schaerr-jaffe.com](mailto:gschaerr@schaerr-jaffe.com)>; Snyder, Cassandra M (CIV) <[Cassandra.M.Snyder@usdoj.gov](mailto:Cassandra.M.Snyder@usdoj.gov)>; Powell, Amy (CIV) <[Amy.Powell@usdoj.gov](mailto:Amy.Powell@usdoj.gov)>  
**Subject:** RE: Schneider v. Austin, 3:22-cv-293 (SD Tex)

Ken,

Do plaintiffs intend to provide any sort of proposal for next steps in this case? We would appreciate a response by the end of today so that we have time to consider any proposal and draft a joint status report.

Thanks,

**Jody D. Lowenstein**  
Trial Attorney  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
1100 L St. NW, Rm. 11010  
Washington, DC 20005  
(202) 598-9280  
[jody.d.lowenstein@usdoj.gov](mailto:jody.d.lowenstein@usdoj.gov)

**From:** Lowenstein, Jody D. (CIV)  
**Sent:** Monday, July 3, 2023 12:27 PM  
**To:** Kenneth Klukowski <[kklukowski@schaerr-jaffe.com](mailto:kklukowski@schaerr-jaffe.com)>  
**Cc:** Gene Schaerr <[gschaerr@schaerr-jaffe.com](mailto:gschaerr@schaerr-jaffe.com)>; Snyder, Cassandra M (CIV) <[Cassandra.M.Snyder@usdoj.gov](mailto:Cassandra.M.Snyder@usdoj.gov)>; Powell, Amy (CIV) <[Amy.Powell@usdoj.gov](mailto:Amy.Powell@usdoj.gov)>  
**Subject:** RE: Schneider v. Austin, 3:22-cv-293 (SD Tex)

Ken,

As you know, the parties in *Schneider v. Austin* have a JSR due on Monday, June 10. Would you please let us know how plaintiffs would like to proceed with this case, if at all.

Thanks,

**Jody D. Lowenstein**  
Trial Attorney  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
1100 L St. NW, Rm. 11010  
Washington, DC 20005  
(202) 598-9280  
[jody.d.lowenstein@usdoj.gov](mailto:jody.d.lowenstein@usdoj.gov)

**From:** Kenneth Klukowski <[kklukowski@schaerr-jaffe.com](mailto:kklukowski@schaerr-jaffe.com)>  
**Sent:** Friday, June 2, 2023 12:09 PM  
**To:** Lowenstein, Jody D. (CIV) <[Jody.D.Lowenstein@usdoj.gov](mailto:Jody.D.Lowenstein@usdoj.gov)>  
**Cc:** Gene Schaerr <[gschaerr@schaerr-jaffe.com](mailto:gschaerr@schaerr-jaffe.com)>; Snyder, Cassandra M (CIV) <[Cassandra.M.Snyder@usdoj.gov](mailto:Cassandra.M.Snyder@usdoj.gov)>; Powell, Amy (CIV) <[Amy.Powell@usdoj.gov](mailto:Amy.Powell@usdoj.gov)>  
**Subject:** [EXTERNAL] RE: Schneider v. Austin, 3:22-cv-293 (SD Tex)

Hi Jody. In that case yes, let's please do a JSR asking for another 30 days, and we can figure out within that time how to move forward.

Thanks so much,  
Ken

Kenneth A. Klukowski  
Schaerr | Jaffe LLP  
1717 K Street NW, Suite 900 | Washington, DC 20006  
Office (202) 787-1060 | Mobile (202) 688-5640  
[kklukowski@schaerr-jaffe.com](mailto:kklukowski@schaerr-jaffe.com) | [www.schaerr-jaffe.com](http://www.schaerr-jaffe.com)

**From:** Lowenstein, Jody D. (CIV) <[Jody.D.Lowenstein@usdoj.gov](mailto:Jody.D.Lowenstein@usdoj.gov)>  
**Sent:** Friday, June 2, 2023 11:58 AM  
**To:** Kenneth Klukowski <[kklukowski@schaerr-jaffe.com](mailto:kklukowski@schaerr-jaffe.com)>  
**Cc:** Gene Schaerr <[gschaerr@schaerr-jaffe.com](mailto:gschaerr@schaerr-jaffe.com)>; Snyder, Cassandra M (CIV) <[Cassandra.M.Snyder@usdoj.gov](mailto:Cassandra.M.Snyder@usdoj.gov)>; Powell, Amy (CIV) <[Amy.Powell@usdoj.gov](mailto:Amy.Powell@usdoj.gov)>  
**Subject:** RE: Schneider v. Austin, 3:22-cv-293 (SD Tex)

Ken,

It is unlikely that Defendants would seriously entertain settlement of a fee demand here, and it seems likely that the issue would have to be briefed. I don't see how Plaintiffs could be prevailing parties. If you make a fee demand and provide an explanation as to why you are a prevailing party and supporting records, we will of course vet the proposal with the clients.

If that is the only remaining issue, would you like to just stipulate to dismissal and reserve the issue of fees? If you need more time, we would be open to telling the court that the parties are continuing to discuss how to proceed and propose filing another JSR in 30 days.

Let us know what you think.

Thanks,

**Jody D. Lowenstein**  
Trial Attorney  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
1100 L St. NW, Rm. 11010  
Washington, DC 20005  
(202) 598-9280  
[jody.d.lowenstein@usdoj.gov](mailto:jody.d.lowenstein@usdoj.gov)

**From:** Kenneth Klukowski <[kklukowski@schaerr-jaffe.com](mailto:kklukowski@schaerr-jaffe.com)>  
**Sent:** Friday, June 2, 2023 8:53 AM  
**To:** Lowenstein, Jody D. (CIV) <[Jody.D.Lowenstein@usdoj.gov](mailto:Jody.D.Lowenstein@usdoj.gov)>  
**Cc:** Snyder, Cassandra M (CIV) <[Cassandra.M.Snyder@usdoj.gov](mailto:Cassandra.M.Snyder@usdoj.gov)>; Gene Schaerr <[gschaerr@schaerr-jaffe.com](mailto:gschaerr@schaerr-jaffe.com)>  
**Subject:** [EXTERNAL] RE: Schneider v. Austin, 3:22-cv-293 (SD Tex)

Good morning, Jody. The only remaining issue for us is Plaintiffs' demand for fees. Would that be something regarding which we could discuss settlement? We could provide you the details regarding fees next week. If you're open to that possibility, you could file a JSR for all of us today, and we could plan to file another JSR in a month or so.

Let us know your thoughts, and thanks so much.

Best regards,  
Ken

Kenneth A. Klukowski  
Schaerr | Jaffe LLP  
1717 K Street NW, Suite 900 | Washington, DC 20006  
Office (202) 787-1060 | Mobile (202) 688-5640  
[kklukowski@schaerr-jaffe.com](mailto:kklukowski@schaerr-jaffe.com) | [www.schaerr-jaffe.com](http://www.schaerr-jaffe.com)

**From:** Lowenstein, Jody D. (CIV) <[Jody.D.Lowenstein@usdoj.gov](mailto:Jody.D.Lowenstein@usdoj.gov)>  
**Sent:** Friday, June 2, 2023 7:26 AM  
**To:** Kenneth Klukowski <[kklukowski@schaerr-jaffe.com](mailto:kklukowski@schaerr-jaffe.com)>; Gene Schaerr <[gschaerr@schaerr-jaffe.com](mailto:gschaerr@schaerr-jaffe.com)>  
**Cc:** Snyder, Cassandra M (CIV) <[Cassandra.M.Snyder@usdoj.gov](mailto:Cassandra.M.Snyder@usdoj.gov)>  
**Subject:** RE: Schneider v. Austin, 3:22-cv-293 (SD Tex)

Ken, Gene,

Following up on this. Would you let us know how plaintiffs would like to proceed with the joint status report due today? Again, Cassie and I would be happy to discuss on a call.

Thanks,

**Jody Lowenstein**  
(202) 598-9280

**From:** Lowenstein, Jody D. (CIV)  
**Sent:** Thursday, June 1, 2023 2:21 PM  
**To:** [kklukowski@schaerr-jaffe.com](mailto:kklukowski@schaerr-jaffe.com); Gene Schaerr <[gschaerr@schaerr-jaffe.com](mailto:gschaerr@schaerr-jaffe.com)>  
**Cc:** Snyder, Cassandra M (CIV) <[Cassandra.M.Snyder@usdoj.gov](mailto:Cassandra.M.Snyder@usdoj.gov)>  
**Subject:** RE: Schneider v. Austin, 3:22-cv-293 (SD Tex)

Ken, Gene,

As you know, the parties in *Schneider* have a joint status report due tomorrow, June 2. Would you let us know whether plaintiffs intend to voluntarily dismiss this case, and if not, what plaintiffs would like to propose to the courts for next steps?

Cassie and I would be happy to jump on a quick call to discuss if you think it would be helpful.

Thanks,

**Jody D. Lowenstein**  
Trial Attorney  
U.S. Department of Justice

Civil Division, Federal Programs Branch  
1100 L St. NW, Rm. 11010  
Washington, DC 20005  
(202) 598-9280  
[jody.d.lowenstein@usdoj.gov](mailto:jody.d.lowenstein@usdoj.gov)